
SENATE BILL No. 208

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-22-2-28; IC 13-14; IC 13-17-2; IC 13-18-1; IC 13-19-2.

Synopsis: Environmental rulemaking. With respect to environmental non-rule policy documents, requires publication of notice of proposed adoption by an environmental rulemaking board (ERB), and provides for public comments and response to comments by the department of environmental management (IDEM). With respect to proposed rules of an ERB, requires disclosure of additional information in the rulemaking process, including justification for requirements and restrictions that exceed federal standards. Adds an economist to the membership of each ERB. Prohibits appointment of a proxy for board meetings by an ex officio ERB member.

Effective: July 1, 2003.

Gard, Hume

January 9, 2003, read first time and referred to Committee on Environmental Affairs.

C
o
p
y



First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 208

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-22-2-28 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) The Indiana
3 economic development council may review and comment on any
4 proposed rule and may suggest alternatives to reduce any regulatory
5 burden that the proposed rule imposes on businesses. The agency that
6 intends to adopt the proposed rule shall respond in writing to the
7 Indiana economic development council concerning the council's
8 comments or suggested alternatives before adopting the proposed rule
9 under section 29 of this chapter.
10 (b) The agency shall also submit a proposed rule with an estimated
11 economic impact greater than five hundred thousand dollars
12 (\$500,000) on the regulated entities to the legislative services agency
13 after the preliminary adoption of the rule. **Except as provided in**
14 **subsection (c)**, before the adoption of the rule, the legislative services
15 agency shall prepare, not more than forty-five (45) days after receiving
16 a proposed rule, a fiscal analysis concerning the effect that compliance
17 with the proposed rule will have on the:



C
o
p
y

(1) state; and

(2) entities regulated by the proposed rule.

The fiscal analysis must contain an estimate of the economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal analysis is a public document. The legislative services agency shall make the fiscal analysis available to interested parties upon request. The agency proposing the rule shall consider the fiscal analysis as part of the rulemaking process and shall provide the legislative services agency with the information necessary to prepare the fiscal analysis. The legislative services agency may also receive and consider applicable information from the regulated entities affected by the rule in preparation of the fiscal analysis.

(c) With respect to a proposed rule subject to IC 13-14-9-4(6), the legislative services agency shall:

(1) consult with the department of environmental management to determine the time a fiscal analysis is required under IC 13-14-9-4(6); and

(2) prepare the fiscal analysis referred to in subsection (b) by the time referred to in subdivision (1).

SECTION 2. IC 13-14-1-11.5, AS AMENDED BY P.L.261-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.5. (a) If the department utilizes a policy or statement that:

(1) interprets, supplements, or implements a statute or rule;

(2) has not been adopted in compliance with IC 4-22-2;

(3) is not intended by the department to have the effect of law; and

(4) is not related solely to internal department organization;

the **proposed** policy or statement may not be put into effect until **the requirements of subsection (b) have been met.**

(b) The department shall present the proposed policy or statement under subsection (a) to the appropriate board. At least thirty (30) days before the presentation, the department shall publish notice in the Indiana Register of:

(1) the proposed policy or statement;

(2) the availability for public inspection of all materials relied upon by the department in the development of the proposed policy or statement, including:

(A) health criteria;

(B) analytical methods;

(C) treatment technology;



(D) economic impact data;

(E) environmental assessment data; and

(F) other background data;

(3) the date, time, and location of the presentation under this subsection to the appropriate board; and

(4) the opportunity for a person to comment to the department and the appropriate board on the proposed policy or statement before or at the time of the presentation under this subsection.

The department shall provide to the appropriate board at the time of the presentation under this subsection a summary response to each comment made by a person under subdivision (4). The proposed policy or statement may not be put into effect until thirty (30) days after the policy or statement is made available for public inspection and comment and presented to the appropriate board.

~~(b)~~ **(c)** If the department utilizes a policy or statement described in subsection (a), the department shall distribute:

- (1) two (2) copies of the policy or statement to the publisher of the Indiana Register for publication in the Indiana Register; and
- (2) the copies required under IC 4-23-7.1-26 to the Indiana library and historical department.

~~(c)~~ **(d)** The department shall:

- (1) maintain a current list of all department policies and statements described in subsection (a) that the department may use in the department's external affairs; and
- (2) update the list at least one (1) time each month.

~~(d)~~ **(e)** The department shall include the following information on the list described in subsection ~~(c)~~ **(d)** for each policy or statement:

- (1) The title of the policy or statement.
- (2) The identification number of the policy or statement.
- (3) The date the policy or statement was originally adopted.
- (4) The date the policy or statement was last revised.
- (5) A reference to all other policies or statements described in subsection (a) that are repealed or amended by the policy or statement.
- (6) A brief description of the subject matter of the policy or statement.

~~(e)~~ **(f)** At least one (1) time every three (3) months, the department shall distribute two (2) copies of the list maintained and updated under subsection ~~(e)~~ **(d)** to the following:

- (1) The publisher of the Indiana Register.
- (2) The Indiana library and historical department.

C
o
p
y



SECTION 3. IC 13-14-9-3 IS AMENDED TO READ AS FOLLOWS[EFFECTIVE JULY 1, 2003]: Sec. 3. The department shall provide notice in the Indiana Register of the first public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

(1) Identify the authority under which the proposed rule is to be adopted.

(2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must:

(A) include a listing of all alternatives being considered by the department at the time of the notice; ~~and must~~

(B) include the fiscal impact of each alternative under clause (A); and

(C) set forth the basis for each alternative listed under clause (A).

(3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.

(4) Request the submission of alternative ways to achieve the purpose of the proposed rule.

(5) Request the submission of comments, including suggestions of specific language for the proposed rule.

(6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

(7) Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed rule applies that is not imposed under federal law.

(8) With respect to each element identified under subdivision (7), identify:

(A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;

(B) examples where federal law is inadequate to provide the protection referred to in clause (A); and

(C) the:

(i) fiscal impact; and

(ii) expected benefits;

based on the extent to which the proposed rule exceeds the requirements of federal law.

(9) Describe the availability for public inspection of all materials relied upon by the department in the development

C
O
P
Y



of the proposed rule, including:

- (A) health criteria;
- (B) analytical methods;
- (C) treatment technology;
- (D) economic impact data;
- (E) environmental assessment data; and
- (F) other background data.

SECTION 4. IC 13-14-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

- (1) Contain the full text of the proposed rule, as provided under IC 4-22-2-24(c).
- (2) Contain a summary of the response of the department to written comments submitted under section 3 of this chapter during the first public comment period.
- (3) Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule.
- (4) Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable.
- (5) Contain any changes to the information included in the notice under section 3 of this chapter.**
- (6) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000), contain a copy of the legislative services agency fiscal analysis required under IC 4-22-2-28.**

SECTION 5. IC 13-14-9-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.5. (a) Except for a rule:

- (1) that has been preliminarily adopted by a board in a form that is:
 - (A) identical to; or
 - (B) not substantively different from;
 the proposed rule published in a second notice under section 4 of this chapter; or
 - (2) for which the commissioner has made a determination and prepared written findings under section 7 or 8 of this chapter;
- a board may not adopt a rule under this chapter until the board has conducted a third public comment period that is at least twenty-one (21) days in length.

C
o
p
y



(b) The department shall publish notice of a third public comment period with the:

- (1) text; ~~and~~
- (2) summary; ~~and~~
- (3) **fiscal analysis;**

that are required to be published in the Indiana Register under section 5(a)(2) of this chapter.

(c) The notice of a third public comment period that must be published in the Indiana Register under subsection (b) must request the submission of comments, including suggestions of specific amendments, that concern only the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter.

SECTION 6. IC 13-14-9.5-1.1, AS ADDED BY P.L.146-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1.1. (a) This section applies to the following:

(1) A rule that is required to receive or maintain:

- (A) delegation;
- (B) primacy; or
- (C) approval;

for state implementation or operation of a program established under federal law.

(2) A rule that is required to begin or continue receiving federal funding for the implementation or operation of a program.

(b) A rule described in subsection (a) does not expire under this chapter.

(c) In the seventh year after the effective date of a rule or an amendment to a rule described in subsection (a), the department shall publish a notice in the Indiana Register. The notice may contain a list of several rules that have been effective for seven (7) years. A separate notice must be published for each board with rulemaking authority. A notice under this subsection must provide for the following:

- (1) A written comment period of at least thirty (30) days.
- (2) A request for comments on specific rules that should be reviewed through the regular rulemaking process under IC 13-14-9.
- (3) A notice of public hearing before the appropriate board.
- (4) **The information required to be identified or described under IC 13-14-9-3(7) through IC 13-14-9-3(9) in the same manner that would apply if the proposed renewal of the expired rule were a proposal to adopt a new rule.**



C
o
p
y

(d) The department shall:

(1) prepare responses to all comments received during the comment period; and

(2) provide all comments and responses to the board during the public board hearing; described in subsection (c).

(e) The board, after considering the written comments and responses, as well as testimony at the public hearing described in subsection (c), shall direct the department on whether additional rulemaking actions must be initiated to address concerns raised to the board.

(f) For the rules described in subsection (a) that are effective on or before July 1, 2001, the notice described in subsection (c) shall be published in the Indiana Register before December 31, 2008.

SECTION 7. IC 13-17-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. The board consists of the following ~~eleven (11)~~ **twelve (12)** members:

(1) The following ex officio members:

(A) The commissioner of the state department of health.

(B) The director of the department of natural resources.

(C) The lieutenant governor.

(2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:

(A) One (1) representative of agriculture.

(B) One (1) representative of manufacturing employed by an entity that has applied for or received a Title V operating permit.

(C) One (1) representative of environmental interests.

(D) One (1) representative of labor.

(E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

An individual appointed under this subdivision must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

(3) One (1) individual who:

C
o
p
y



1 **(A) is an economist; and**

2 **(B) shall be appointed by the governor.**

3 SECTION 8. IC 13-17-2-3 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~four~~
5 **(4) five (5)** of the appointed members of the board may be members of
6 the same political party.

7 SECTION 9. IC 13-17-2-6 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. An ex officio
9 member of the board may **not** designate ~~in writing~~ a technical
10 representative to serve as a voting member of the board when the ex
11 officio member is unable to attend a board meeting.

12 SECTION 10. IC 13-17-2-10 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. ~~Six (6)~~ **Seven (7)**
14 members of the board, ~~four (4)~~ **five (5)** of whom must be appointed
15 members of the board, constitute a quorum.

16 SECTION 11. IC 13-17-2-11 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. The governor shall
18 annually select:

19 (1) one (1) of the ~~eight (8)~~ appointed members of the board to
20 serve as chairman; and

21 (2) another of the appointed members of the board to serve as vice
22 chairman.

23 SECTION 12. IC 13-17-2-12 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The board shall
25 select, from a list of three (3) qualified individuals recommended by
26 the governor, an independent third party who is not an employee of the
27 state to serve as technical secretary of the board.

28 (b) During the interim between meetings of the board, the
29 ~~department~~ **technical secretary** shall do the following:

30 (1) Handle correspondence.

31 (2) Make or arrange for investigations and surveys.

32 (3) Obtain, assemble, or prepare reports and data as directed by
33 the board.

34 (c) The technical secretary shall:

35 **(1) review all materials prepared for the board by the department**
36 **to make any necessary revisions; and**

37 **(2) schedule and facilitate all meetings and advise the board**
38 **on all aspects of proposed rulemaking actions.**

39 **(d) Provisions of this chapter concerning terms of appointment,**
40 **vacancies, and compensation of appointed board members apply to the**
41 **technical secretary. The technical secretary is not a voting member of**
42 **the board.**

C
o
p
y



SECTION 13. IC 13-18-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board consists of the following ~~eleven (11)~~ **twelve (12)** members:

(1) The following ex officio members:

- (A) The commissioner of the state department of health.
- (B) The director of the department of natural resources.
- (C) The lieutenant governor.

(2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:

- (A) One (1) representative of agriculture.
- (B) One (1) representative of manufacturing employed by an entity that holds an NPDES major permit.
- (C) One (1) representative of environmental interests.
- (D) One (1) representative of labor.
- (E) One (1) representative of local government.
- (F) One (1) health professional who holds a license to practice in Indiana.
- (G) One (1) representative of small business.
- (H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

(3) One (1) individual who:

(A) is an economist; and

(B) shall be appointed by the governor.

(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

SECTION 14. IC 13-18-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~four~~ **five (5)** of the appointed members of the board may be members of the same political party.

SECTION 15. IC 13-18-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. An ex officio member of the board may **not** designate ~~in writing~~ a technical representative to serve as a voting member of the board when the ex officio member is unable to attend a board meeting.

SECTION 16. IC 13-18-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. ~~Six (6)~~ **Seven (7)** members of the board, ~~four (4)~~ **five (5)** of whom must be appointed members of the board, constitute a quorum.

SECTION 17. IC 13-18-1-11 IS AMENDED TO READ AS



C
o
p
y

1 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) The board shall
 2 select, from a list of three (3) qualified individuals recommended by
 3 the governor, an independent third party who is not an employee of the
 4 state to serve as technical secretary of the board.

5 (b) Between meetings of the board, the ~~department~~ **technical**
 6 **secretary** shall do the following:

- 7 (1) Handle correspondence.
- 8 (2) Make or arrange for investigations and surveys.
- 9 (3) Obtain, assemble, or prepare reports and data as directed by
 10 the board.

11 (c) The technical secretary shall:

- 12 (1) review all materials prepared for the board by the department
 13 to make any necessary revisions; **and**
- 14 (2) **schedule and facilitate all meetings and advise the board**
 15 **on all aspects of proposed rulemaking actions.**

16 (d) Provisions of this chapter concerning terms of appointment,
 17 vacancies, and compensation of appointed board members apply to the
 18 technical secretary. The technical secretary is not a voting member of
 19 the board.

20 SECTION 18. IC 13-19-2-2 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board
 22 consists of ~~thirteen (13)~~ **fourteen (14)** members as follows:

23 (1) The following ex officio members:

- 24 (A) The commissioner of the state department of health.
- 25 (B) The director of the department of natural resources.
- 26 (C) The lieutenant governor.

27 (2) The following ten (10) members, who shall be appointed by
 28 the governor based on recommendations from representative
 29 constituencies:

- 30 (A) One (1) representative of agriculture.
- 31 (B) One (1) representative of manufacturing.
- 32 (C) One (1) representative of environmental interests.
- 33 (D) One (1) representative of labor.
- 34 (E) One (1) representative of local government.
- 35 (F) One (1) health professional who holds a license to practice
 36 in Indiana.
- 37 (G) One (1) representative of small business.
- 38 (H) One (1) representative of the general public, who cannot
 39 qualify to sit on the board under any of the other clauses in this
 40 subdivision.
- 41 (I) One (1) representative of the solid waste management
 42 industry.



C
o
p
y

(J) One (1) representative of the solid waste management districts.

(3) One (1) individual who:

(A) is an economist; and

(B) shall be appointed by the governor.

(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

SECTION 19. IC 13-19-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than ~~five~~ **(5) six (6)** of the appointed members of the board may be members of the same political party.

SECTION 20. IC 13-19-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. An ex officio member of the board may **not** designate ~~in writing~~ a technical representative to serve as a voting member of the board when the ex officio member is unable to attend a board meeting.

SECTION 21. IC 13-19-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. ~~Seven (7)~~ **Eight (8)** members of the board, four (4) of whom must be appointed members of the board, constitute a quorum.

SECTION 22. IC 13-19-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. The governor shall annually select:

(1) one (1) of the ~~ten (10)~~ appointed members of the board to serve as chairman; and

(2) another of the appointed members of the board to serve as vice chairman.

SECTION 23. IC 13-19-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) The board shall select, from a list of three (3) qualified persons recommended by the governor, an independent third party who is not an employee of the state to serve as technical secretary of the board.

(b) During the interim between meetings of the board, the ~~department~~ **technical secretary** shall do the following:

(1) Handle correspondence.

(2) Make or arrange for investigations and surveys.

(3) Obtain, assemble, or prepare reports and data as directed by the board.

(c) The technical secretary shall:

(1) review all materials prepared for the board by the department to make any necessary revisions; **and**

C
o
p
y



1 **(2) schedule and facilitate all meetings and advise the board**
 2 **on all aspects of proposed rulemaking actions.**

3 **(d)** Provisions of this chapter concerning terms of appointment,
 4 vacancies, and compensation of appointed board members apply to the
 5 technical secretary. The technical secretary is not a voting member of
 6 the board.

7 SECTION 24. [EFFECTIVE JULY 1, 2003] **(a) IC 13-14-1-11.5(b),**
 8 **as amended by this act, applies to proposed policies or statements**
 9 **presented by the department of environmental management to the**
 10 **appropriate board after June 30, 2003.**

11 **(b)** The following, all as amended by this act, apply to proposed
 12 **rules for which the department of environmental management**
 13 **provides notice in the Indiana Register of the first public comment**
 14 **period required by IC 13-14-9-3 after June 30, 2003:**

15 **(1) IC 4-22-2-28.**

16 **(2) IC 13-14-9-3.**

17 **(3) IC 13-14-9-4.**

18 **(4) IC 13-14-9-4.5.**

19 **(5) IC 13-14-9.5-1.1.**

20 **(c) This SECTION expires January 1, 2004.**

C
o
p
y

